

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

App. No.	:	09/517,874	Confirmation No.:	5325
Inventor	:	Porter		
Filed	:	March 2, 2000		
Title	:	EXCLUSIVE USE DISPLAY SURFACE AREAS AND PERSISTENTLY VISIBLE DISPLAY OF CONTENTS INCLUDING ADVERTISEMENTS		
Art Unit	:	2174		
Examiner	:	Sax, Steven Paul		
Customer No.	:	25,943		

MAIL STOP: APPEAL BRIEF-PATENTS

Commissioner for Patents

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Alexandria, VA 22313-1450

**APPELLANT'S BRIEF UNDER 37 C.F.R. §1.192 IN SUPPORT OF
APPELLANT'S APPEAL TO THE BOARD OF PATENT APPEALS AND
INTERFERENCES**

Dear Sir:

In response to the Notification of Non-Compliance mailed, Appellant hereby re-submits the Appeal Brief previously submitted on February 22, 2007, in support of Appellant's appeal. This is a re-submission of Appellant's Brief in response to the Notification of Non-Compliance mailed on July 17, 2007. The deficiency has been corrected. This appeal furthers the Notice of Appeal filed on December 22, 2006. The appeal arises from a final decision by the Examiner in the final Office Action, dated August 22, 2006. The final decision was in response to arguments filed on May 30, 2006, in response to an earlier office action, mailed February 27, 2006.

Appellant re-submits this *Brief on Appeal*. Payment in the amount of \$500.00 to cover the fee for filing the *Brief on Appeal* was tendered with the original submission. Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

Real Party in Interest:

The real party in interest is Hall Aluminum, LLC, having its primary place of business at 171 Main St. #271, Los Altos, California 94022, successor in interest to Xoucin, Inc., which is successor in interest to Assignee Wildseed, Ltd. by virtue of the assignment to Wildseed recorded with the United States Patent and Trademark Office on June 12, 2000, at Reel 010915 Frame 0721.

Related Appeals and Interferences:

To the best of Appellant's knowledge, there are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Appellant appeals the rejection of claims 1-29, which were rejected in the final Office Action dated August 22, 2006. Claims 1-29 are reproduced, as pending, in Appendix A. Claims 30-34 were previously withdrawn, and claims 35-36 were previously cancelled, and are not involved in this appeal.

Status of Amendments:

Appellant submitted a response on October 23, 2006, subsequent to the Examiner's final rejection. The response, which contained no amendments to the claims, has been entered by the Examiner.

Summary of the Claimed Subject Matter:

Independent claim 1 is as follows. Support for each limitation of claim 1 in the form of figure elements corresponding to each limitation and portions of the Specification given by page and line numbers for each limitation is shown, inline:

“1. A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:” **(Elements 100 and 102 of Figures 1a-1f; Page 7, lines 4 through page 8, line 20.)**

“reserving a first portion of the operating system controllable primary display area for exclusive use and control by a first program that is not part of said operating system; and” **(Element 226 of Figures 2 and 3; Page 9, lines 8-13 and page 11, line 1 through page 12, line 4. Element 406 of Figure 4a; Page 13, lines 1-23.)**

“rendering contents in said reserved first portion of the operating system controllable primary display area, by said first program, excluding all other programs, including said operating system, from using or controlling said reserved first portion of operating system controllable primary display area.” **(Element 410 of Figure 4a; Page 14, lines 5-18. Page 7, lines 11-14.)**

Independent claim 14 is as follows. Support for each limitation of claim 14 in the form of figure elements corresponding to each limitation and portions of the Specification given by page and line numbers for each limitation is shown, inline:

“14. A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:” **(Elements 100 and 102 of Figures 1a-1f; Page 7, lines 4 through page 8, line 20.)**

“pre-alerting a display area manager of a display mode switch request to a window manager;” **(Element 432 of Figure 4d; Page 18, lines 8-21.)**

"submitting said display mode switch request to said window manager; and" **(Element 434 of Figure 4d; Page 18, lines 8-21.)**

"aborting a responsive request by the window manager to a display device driver to configure a display hardware in accordance with said display mode switch request, to effectuate reservation of an area of the operating system controllable primary display area for exclusive use and control by a program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling the reserved area of the operating system controllable primary display area." **(Element 438 of Figure 4d; Page 18, lines 8-21.)**

Independent claim 16 is as follows. Support for each limitation of claim 16 in the form of figure elements corresponding to each limitation and portions of the Specification given by page and line numbers for each limitation is shown, inline:

"16. A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:" **(Elements 100 and 102 of Figures 1a-1f; Page 7, lines 4 through page 8, line 20.)**

"determining if a first event has occurred;" **(Element 426 of Figure 4c; Page 16, line 22 through page 17, line 6.)**

"operating the display device with the operating system controllable primary display area having one or more display areas whose contents are persistently visible and controlled by a first program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling the one or more display areas, if the first event is determined to have occurred;" **(Element 428 of Figure 4c; Page 16, line 22 through page 17, line 6.)**

"determining if a second event has occurred; and" **(Element 422 of Figure 4c; Page 16, line 22 through page 17, line 6.)**

"operating the display device with the operating system controllable primary display area having no display area whose contents are persistently visible and controlled by a program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling, if the second event is determined to have occurred." **(Element 424 of Figure 4c; Page 16, line 22 through page 17, line 6.)**

Independent claim 20 is as follows. Support for each limitation of claim 20 in the form of figure elements corresponding to each limitation and portions of the Specification given by page and line numbers for each limitation is shown, inline:

"20. A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:" **(Elements 100 and 102 of Figures 1a-1f; Page 7, lines 4 through page 8, line 20.)**

"intercepting a page flipping call by an application that is not part of the operating system, operating in a full screen mode;" **(Figure 1c (perimeter between elements 100 and 102); Page 7, line 4 through page 8, line 20. Page 17, lines 7-20)**

"updating locations of a back buffer unused by said application with contents to be persistently visible in an area of the operating system controllable primary display area reserved for use and control by the application, excluding all other programs, including the operating system, from using or controlling the reserved area of the operating system controllable primary display area; and" **(Figure 1c (perimeter between elements 100 and 102); Page 7, line 4 through page 8, line 20. Page 17, lines 7-20)**

"forwarding said page flipping call onward after said updating." **(Figure 1c (perimeter between elements 100 and 102); Page 7, line 4 through page 8, line 20. Page 17, lines 7-20)**

Independent claim 25 is as follows. Support for each limitation of claim 25 in the form of figure elements corresponding to each limitation and portions of the Specification given by page and line numbers for each limitation is shown, inline:

"25. An apparatus comprising:

a storage medium having stored therein a plurality of programming instructions designed to implement a display device driver to render displays on an operating system controllable primary display area of a display device, and a use manager to cooperate with said display device driver to effectuate reservation of a first sub-portion of said operating system controllable primary display area for exclusive use or control by a program that is not part of the operating system, to render persistently visible contents in the reserved first sub-portion of said operating system controllable primary display area, excluding all other programs, including the operating system, from using or controlling the reserved first sub-portion of said operating system controllable primary display area, the display device further having an overscan area not controlled by the operating system; and" **(Elements 100 and 102 of Figures 1a-1f; Page 7, lines 4 through page 8, line 20. Element 208 of Figure 2; Page 10, lines 1-11. Elements 306 and 310 of Figure 3; Page 11, line 1 through page 14, line 4.)**

"a processor coupled to the display device and the storage medium to execute the programming instructions." **(Element 202 of Figure 2; Page 9, lines 16-21.)**

Grounds For Rejection To Be Argued On Appeal:

- I. Claims 1-11, 14-19, 21-23, and 25-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,330,010 to *Nason et al.* (hereinafter "Nason") in view of U.S. Patent No. 6,151,059 to *Schein et al.* (hereinafter "Schein").
- II. Claims 12-13, 20, 24, and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nason and Schein in view of U.S. Patent No. 6,583,793 to *Gould et al.* (hereinafter "Gould").

Arguments:

- I. Rejection of claims 1-11, 14-19, 21-23, and 25-28 under 35 U.S.C. §103(a) was improper because Nason and Schein, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 1-11, 14-19, 21-23, and 25-28 is viewed as a whole.

To establish obviousness under 35 U.S.C. § 103, the Examiner must view the invention as a whole. Further, the Examiner is to perform the obviousness analysis in accordance with the standard set forth by the Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). That standard requires that the Examiner (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claims in issue; (3) resolve the level of ordinary skill in the art; and (4) evaluate evidence of secondary considerations. *Id.* at 17-18; *see also* MPEP 2141. Secondary considerations include whether the invention met with commercial success, whether the invention answered a long felt need, and whether others attempting the invention have failed. *Graham*, 383 U.S. at 17-18. Further, in applying the *Graham* framework, the Examiner must consider the invention as a whole, without the benefit of hindsight. MPEP 2141.

Claim 1 recites: "A method to be performed on a computer system having a display device including a display surface having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:

reserving a first portion of the operating system controllable primary display area for exclusive use and control by a first program that is not part of the operating system; and

rendering contents in said reserved first portion of the operating system controllable primary display area, by said first program, excluding all other programs, including said operating system, from using or controlling said

reserved first portion of operating system controllable primary display area."

When viewed as a whole, as is required, claim 1 teaches a novel method of reserving a portion of an operating system controllable primary display area for exclusive use and control by a first program, other than the operating system, thereby reducing the portion of the primary display area controllable by the operating system.

In contrast, nothing in Nason teaches or even suggests reserving a portion of an operating system controllable display area for exclusive use and control by a program. At best, Nason merely teaches a "method for creating and accessing a graphical user interface in the overscan area outside the area of the display normally utilized by the common operating system." Only desktop 31, and not the overscan area 30, of Nason is controllable by the operating system (see, e.g., Abstract and Fig. 2). The overscan area 30 is controlled by the video hardware (see, e.g., Fig. 2). But no portion of desktop 31 of Nason (controllable by the operating system) is reserved for exclusive use and control by any program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling the reserved portion.

Further, reserving a portion of the overscan area in no way suggests reserving a portion of the operating system controllable primary display area. Reserving a portion of the overscan area simply requires interfacing with video hardware. Reserving a portion of the area controlled by the operating system in such a fashion that the operating system loses control of that area poses a number of technical challenges not present in the reserving of the overscan area. Additionally, Nason arguably teaches away from reserving a portion of the operating system controllable primary display area by teaching a method of reserving a portion of the overscan area. By allowing a program to reserve the overscan area, Nason obviates the need to leap the technical hurdles associated with reserving a portion of the operating system controllable primary display area.

In further contrast, Schein does not teach or suggest, alone or in combination with the above-discussed Nason, the reservation of the operating system controllable primary display area for exclusive use and control by a first program, other than the operating system, thereby reducing the portion of the primary display area controllable by the operating system. In fact, Schein does not even teach or suggest the reservation of an area of the television display for exclusive use. In the final Office Action, the Examiner states that Schein has "a program outside the operating system which delivers video to a reserved portion of the primary display." The Examiner is apparently referring to window 220 of Figures 1 and 7 (the window in the bottom right of the display interface) where TV video is being rendered. While Figures 1 and 7-25 do show that area being used to deliver the video, Figure 26 instead presents the same portion of the display as a menu list with a number of items. Thus, Schein does not teach or suggest reserving that portion for the exclusive use of a program. Also, no other area of the display is taught or suggested to be reserved for exclusive use of a program. Each area of the display is taught as being controlled by the On Screen Display Controller and Formatter 124, shown by Figure 3, and no mention is made of an outside program interacting with the On Screen Display Controller and Formatter 124, or any other program, to reserve a portion of the display for its exclusive use. Thus, Schein simply does not teach or suggest reservation of a portion of the display area for exclusive use.

Further, Schein does not mention an operating system for the television. Schein only discusses programming modules adapted to create a programming guide from the video feed, and the logic of the On Screen Display Controller and Formatter 124, which is adapted to cause the rendering of the programming guide and video feed. The term operating system, in its common usage within the art, means "a program that acts as an intermediary between a user of a computer and the computer hardware. The purpose of the operating system is to provide an environment in which a user can execute programs." Abraham Silberschatz & Peter Galvin, Operating System Concepts, pg. 3 (5th Ed. 1999). At best, the logic for generating the programming guide and in

combination with the logic of the On Screen Display Controller and Formatter 124 arguably comprise an "operating system" since they, together, act as an intermediary between the television user and the display on which contents are rendered. Even accepting this interpretation, however, Schein simply does not suggest a program, other than the logic above described as constituting the "operating system", reserving a portion of the display controlled by the "operating system" for exclusive use. In Applicant's Agent's phone interview with the Examiner, the Examiner suggested that the TV card 40 (Figure 2), which may be connected to the On Screen Display Controller and Formatter 124 through Video In 123 (Figure 3) might read on the first program of claim 1 for which an exclusive use area is reserved. Even if one accepts, however, that the TV Card 40 may read on "a first program that is not part of the operating system", nothing in Schein discusses or suggests reserving an area of the display for exclusive use of the TV Card 40 to render video content. Applicant again refers the Examiner to Figure 26, discussed above, where the video content of TV Card 40 is not rendered at all.

Accordingly, Nason and Schein, alone or in combination, fail to suggest reserving a portion of an operating system controllable primary display area for exclusive use and control by a first program, other than the operating system, thereby reducing the portion of the primary display area controllable by the operating system. Thus, claim 1 is patentable over the combination of Nason and Schein.

Claims 14, 16, and 25 are independent claims having limitations similar to those of claim 1. Thus, for at least the same reasons, claims 14, 16, and 25 are patentable over Nason and Schein, alone or in combination.

Claims 2-11, 15, 17-19, 21-23, and 26-28 depend from claims 1, 14, 16, and 25, incorporating their recitations. Thus, for at least the same reasons, claims 2-11, 15, 17-19, 21-23, and 26-28 are patentable over Nason and Schein, alone or in combination.

Additionally, Nason and Schein fail to teach or suggest the “pre-alerting an display area manager of said display mode switch request to said window manager” recited by claims 4 and 9. Neither Nason nor Schein even teaches a “display area manager” to be pre-alerted. As the Examiner has pointed out, Nason does disclose the alerting of the rendering program of a display mode switch. The rendering program, however, is not disclosed as managing any area of the display, and thus is not a “display area manager.” Accordingly, for this additional reason, claims 4 and 9 are patentable over Nason and Schein, alone or combined.

- II. Rejection of claims 12-13, 20, 24, and 29 under 35 U.S.C. §103(a) was improper because Nason, Schein, and Gould, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 12-13, 20, 24, and 29 is viewed as a whole.

Gould fails to cure the above discussed deficiencies of Nason and Schein. Therefore, claims 1, 20, and 25 remain patentable over Nason and Schein even when combined with Gould.

Claims 12-13, 24, and 29 depend from claims 1, 20, and 25, respectively, incorporating their recitations. Thus, for at least the same reasons, claims 12-13, 24, and 29 are patentable over Nason and Schein in view of Gould

Conclusion

Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

The fees associated with the appeal brief were submitted with the original appeal brief. We do not believe any additional fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our deposit account 500393. In addition, please charge any shortages and credit any overages to Deposit Account No. 500393.

Respectfully submitted,

Date: December 7, 2007

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Appendix A – Appealed Claims

1. (Previously Presented) A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:

reserving a first portion of the operating system controllable primary display area for exclusive use and control by a first program that is not part of said operating system; and

rendering contents in said reserved first portion of the operating system controllable primary display area, by said first program, excluding all other programs, including said operating system, from using or controlling said reserved first portion of operating system controllable primary display area.

2. (Original) The method of claim 1, wherein said reserving comprises requesting a window manager to switch to a display mode having a smaller pixel configuration.

3. (Original) The method of claim 2, wherein said reserving further comprises aborting a responsive request by the window manager to a display device driver to configure a display hardware to said smaller pixel configuration.

4. (Previously Presented) The method of claim 2, wherein said reserving further comprises pre-alerting a display area manager of said display mode switch request to said window manager.

5. (Original) The method of claim 1, wherein
the method further comprises determining if a first event has occurred; and
said reserving is performed only if the first event is determined to have occurred.

6. (Previously Presented) The method of claim 5, wherein the method further comprises
- determining if a second event has occurred; and
 - unreserving said first portion of the operating system controllable primary display area for use by said first program if the second event is determined to have occurred.
7. (Original) The method of claim 6, wherein said unreserving comprises requesting a window manager to switch to a display mode having a larger pixel configuration.
8. (Original) The method of claim 7, wherein said unreserving further comprises aborting a responsive request by the window manager to a display device driver to configure a display hardware to said larger pixel configuration.
9. (Previously Presented) The method of claim 7, wherein said reserving further comprises pre-alerting an display area manager of said display mode switch request to said window manager.
10. (Previously Presented) The method of claim 1, wherein the method further comprises
- monitoring for a request by an application to change a display mode to a full screen mode; and
 - notifying said first program to temporarily stop rendering contents in said reserved first portion of the operating system controllable primary display area.
11. (Previously Presented) The method of claim 10, wherein the method further comprises
- monitoring for a request by an application to change a display mode from a full screen mode to a normal mode; and

notifying said first program to resume rendering contents in said reserved first portion of the operating system controllable primary display area.

12. (Original) The method of claim 1, wherein the method further comprises monitoring for a request by an application to change a display mode to a full screen mode; and

upon detecting such as request, intercepting all page flipping calls by said application, and forwarding each of said page flipping calls onward only after said first program has updated a back buffer.

13. (Previously Presented) The method of claim 12, wherein the method further comprises interacting with said full screen mode requesting application to maintain said reserved first portion of the operating system controllable primary display area.

14. (Previously Presented) A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:

pre-alerting a display area manager of a display mode switch request to a window manager;

submitting said display mode switch request to said window manager; and

aborting a responsive request by the window manager to a display device driver to configure a display hardware in accordance with said display mode switch request, to effectuate reservation of an area of the operating system controllable primary display area for exclusive use and control by a program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling the reserved area of the operating system controllable primary display area.

15. (Original) The method of claim 14, wherein said display mode switch request is a request to switch to a selected one of a smaller and a larger pixel configuration.

16. (Previously Presented) A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:

- determining if a first event has occurred;

- operating the display device with the operating system controllable primary display area having one or more display areas whose contents are persistently visible and controlled by a first program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling the one or more display areas, if the first event is determined to have occurred;

- determining if a second event has occurred; and

- operating the display device with the operating system controllable primary display area having no display area whose contents are persistently visible and controlled by a program that is not part of the operating system, excluding all other programs, including the operating system, from using or controlling, if the second event is determined to have occurred.

17. (Previously Presented) The method of claim 16, wherein said operating of the display device with the operating system controllable primary display area having one or more display areas whose contents are persistently visible and controlled by a first program further comprises accommodating the first program to operate in a full screen mode.

18. (Previously Presented) The method of claim 17, wherein said accommodating comprises temporarily suspending rendering contents into said display areas.

19. (Previously Presented) The method of claim 17, wherein said accommodating comprises interacting with said first program that operates in a full screen mode to at least partially maintain said display areas.

20. (Previously Presented) A method to be performed on a computer system having a display device including a display surface, having a primary display area controllable by an operating system and an overscan area not controlled by the operating system, the method comprising:

intercepting a page flipping call by an application that is not part of the operating system, operating in a full screen mode;

updating locations of a back buffer unused by said application with contents to be persistently visible in an area of the operating system controllable primary display area reserved for use and control by the application, excluding all other programs, including the operating system, from using or controlling the reserved area of the operating system controllable primary display area; and

forwarding said page flipping call onward after said updating.

21. (Original) An article of manufacture comprising:

a recordable medium having stored thereon a plurality of programming instructions to be executed by a processor, wherein when executed, perform the operations set forth in claim 1.

22. (Original) An article of manufacture comprising:

a recordable medium having stored thereon a plurality of programming instructions to be executed by a processor, wherein when executed, perform the operations set forth in claim 14.

23. (Original) An article of manufacture comprising:

a recordable medium having stored thereon a plurality of programming instructions to be executed by a processor, wherein when executed, perform the operations set forth in claim 16.

24. (Original) An article of manufacture comprising:

a recordable medium having stored thereon a plurality of programming instructions to be

executed by a processor, wherein when executed, perform the operations set forth in claim 20.

25. (Previously Presented) An apparatus comprising:

a storage medium having stored therein a plurality of programming instructions designed to implement a display device driver to render displays on an operating system controllable primary display area of a display device, and a use manager to cooperate with said display device driver to effectuate reservation of a first sub-portion of said operating system controllable primary display area for exclusive use or control by a program that is not part of the operating system, to render persistently visible contents in the reserved first sub-portion of said operating system controllable primary display area, excluding all other programs, including the operating system, from using or controlling the reserved first sub-portion of said operating system controllable primary display area, the display device further having an overscan area not controlled by the operating system; and

a processor coupled to the display device and the storage medium to execute the programming instructions.

26. (Previously Presented) The apparatus of claim 25, wherein the use manager is equipped to receive an alert of a display mode change request from a window manager to said display device driver, and in response, upon intercepting said display mode change request, aborting said display mode change request.

27. (Previously Presented) The apparatus of claim 25, wherein the use manager is equipped to monitor for a display mode change request to enter a full screen mode of operation from an application, and in response, notifying applications associated with said use display areas to temporarily suspend rendering contents into said use display areas.

28. (Previously Presented) The apparatus of claim 25, wherein the use manager is equipped to monitor for a display mode change request to enter a full screen mode of

operation from an application, and interact with said application to at least partially maintain said display areas.

29. (Previously Presented) The apparatus of claim 28, wherein the use manager is further equipped to intercept page flipping calls by said application, and facilitating rendering of contents into said display areas by applications associated with the display areas prior to forwarding the intercepted page flipping calls.

Appendix B – Copies of Evidence Submitted

No evidence has been submitted under 37 C.F.R. 1.130, 1.131, or 1.132. No evidence entered by Examiner has been relied upon by Appellants in the appeal.

Appendix C – Related Proceedings

There are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.